

# HOUSE . . . . . No. 674

By Mrs. Teahan of Whitman, petition of Kathleen M. Teahan and others relative to information provided to women seeking abortions. The Judiciary.

## The Commonwealth of Massachusetts

### PETITION OF:

Kathleen M. Teahan	Peter J. Larkin
Philip Travis	A. Stephen Tobin
Michael F. Rush	Elizabeth A. Poirier
Brian Paul Golden	Angelo M. Scaccia
Paul J. Donato	Anthony J. Verga
Barry R. Finegold	Colleen M. Garry
John P. Fresolo	Viriato Manuel deMacedo
Jeffrey Davis Perry	Emile J. Goguen
Paul Kujawski	Stephen P. LeDuc
David B. Sullivan	Walter F. Timilty

In the Year Two Thousand and Five.

AN ACT RELATIVE TO A WOMAN'S RIGHT TO KNOW.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. The General Court finds that:—

2 (1) The commonwealth has an important interest in ensuring  
3 that women seeking abortions are provided a fully informed  
4 choice and a sufficient period of time to reflect on the information  
5 provided, “to reduce the risk that a woman may elect an abortion,  
6 only to discover later, with devastating psychological conse-  
7 quences, that her decision was not fully informed.” Planned Par-  
8 enthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 882  
9 (1992)

10 (2) Key provisions of section 12S of Chapter 112 of the  
11 General Laws are not being enforced due to the continued opera-

12 tion of an out-dated declaratory judgment of the federal district  
13 court of Massachusetts issued before the United States Supreme  
14 court upheld the constitutionality of informed consent and reflec-  
15 tion period protections in its 1992 Casey decision, and other pro-  
16 visions are being implemented in such a manner as to provide an  
17 inadequate opportunity for women seeking abortions to make a  
18 fully informed choice.

19 Thus, the purpose of the Woman's Right to Know Act is to  
20 ensure that every woman considering an abortion receives com-  
21 plete information on the procedure, the risks, the status of her  
22 unborn child, and her alternatives, and sufficient reflection time,  
23 thereby reducing the possibility of serious, lasting, or life threat-  
24 ening consequences of a medical, emotional and psychological  
25 nature.

1 SECTION 2. Chapter 112 of the General Laws is hereby  
2 amended by striking the first paragraph of section 12S, appearing  
3 at lines 1 through 19 in the 2000 Official Edition of the General  
4 Laws of Massachusetts, and inserting the following:—

5 Section 12S. No physician may perform an abortion upon a  
6 pregnant woman without first obtaining her written informed con-  
7 sent in compliance with the following procedures, unless in a case  
8 of a medical emergency, compliance would cause the pregnant  
9 woman's death or the woman's substantial and irreversible impair-  
10 ment of a major bodily function. The referring physician, the  
11 physician performing the abortion, or either physician's agent  
12 must provide in a manner enabling the pregnant woman to receive  
13 at least twenty-four hours before the time an abortion is scheduled  
14 to be performed a printed pamphlet, the internet address to a state-  
15 sponsored website, or toll free number for an audio recording, all  
16 of which are created and maintained by the commissioner of  
17 public health, and which communicate the following general  
18 information: a written notice of the patients' rights guaranteed by  
19 section 70E of chapter 111 of the General Laws; a comprehensive  
20 list of the names, addresses, and contact information of public and  
21 private agencies and services available in the Commonwealth to  
22 provide medical, financial and other assistance to a woman  
23 through pregnancy, upon childbirth, and while her child is depen-  
24 dent, with prenatal, childbirth, neonatal, childrearing, and adop-

25 tion services; a description of the probable anatomical and physio-  
26 logical characteristics of the unborn child at two week gestational  
27 increments from fertilization to full term, including color pho-  
28 tographs or if a representative photograph is not available, real-  
29 istic drawings of the developing unborn child at two week  
30 increments, and including written information about brain and  
31 heart function and the presence of external members and internal  
32 organs at each stage of development; a description of the various  
33 methods of abortion, and the physical, psychological and emo-  
34 tional risks or medical complications commonly associated with  
35 each method; a description of the physical, psychological and  
36 emotional risks or medical complications of pregnancy and  
37 delivery; a description of the support obligations of the father of a  
38 child born alive; and statements that, under the law of the com-  
39 monwealth, a person's refusal to undergo abortion does not consti-  
40 tute grounds for the denial of public assistance, that the law  
41 permits adoptive parents to pay the cost of prenatal care, child-  
42 birth and neonatal care, that the father of the unborn child is liable  
43 to assist in the support of the child, even in instances where he has  
44 offered to pay for the abortion, that it is unlawful for any indi-  
45 vidual to coerce a woman to undergo an abortion, and that any  
46 physician who performs an abortion upon a woman without  
47 obtaining her informed consent may be liable to her for damages  
48 in a civil action at law. The texts of the pamphlet, website and  
49 audio recording shall be identical in content, incorporate the defi-  
50 nitions of abortion, pregnancy, and unborn child as set out in  
51 Section 12K of this Chapter, be objective, nonjudgmental and  
52 designed to convey only accurate scientific information when dis-  
53 cussing fetal development and medical risks, be written in a  
54 manner designed to permit a person unfamiliar with medical ter-  
55 minology to understand its purpose and content, and be published  
56 in English, Spanish, and Portuguese, and in each other language  
57 which is the primary language of 2% or more of the state's popu-  
58 lation. Prior to the scheduled abortion and before the woman pro-  
59 vides her written consent to the abortion, the referring physician  
60 or the physician performing the abortion must orally inform the  
61 woman of: the nature of the proposed abortion method and associ-  
62 ated risks and alternatives that a reasonable patient in the wom-  
63 an's position would consider material to the decision of whether to

64 undergo the abortion; the probable gestational age of the unborn  
65 child at the time the abortion is to be performed; and the probable  
66 anatomical and physiological characteristics of the unborn child at  
67 the time the abortion is to be performed. Also prior to the sched-  
68 uled abortion and before the woman provides her written consent  
69 to the abortion, the referring physician, the physician performing  
70 the abortion, or either physician's agent shall orally inform the  
71 woman that alternatives to abortion are available, ask the woman  
72 if she has seen the information, including the list of abortion alter-  
73 native agencies, provided in the pamphlet, website or recorded  
74 telephone message described in this section, give the woman a  
75 copy of the pamphlet if she requests one at this time, and provide  
76 the woman with an opportunity to contact abortion alternative  
77 agencies at this time should she so desire. Before the scheduled  
78 abortion but after she is provided with the opportunity to receive  
79 the information described in this section, if she decides to obtain  
80 the abortion, the woman shall sign a consent form. The form shall  
81 indicate that she has been offered the information described in this  
82 section and does provide her informed consent to the abortion.  
83 The physician performing the abortion shall maintain the signed  
84 consent form in the physician's files and destroy it seven years  
85 after the date upon which the abortion is performed. The commis-  
86 sioner of public health shall create and publish within ninety days  
87 after the effective date of this act, and shall review on an annual  
88 basis and update if necessary, the pamphlet, website, telephone  
89 recordings, and consent form required by this section. The com-  
90 missioner shall avail at no cost and in appropriate number to any  
91 institution, clinic or physician's office providing abortions the  
92 printed materials required under this section.

1     SECTION 3. Chapter 111, section 70E is hereby amended by  
2     adding "institution, clinic, or physician's office providing abor-  
3     tions," immediately after the word "clinic," and before the word  
4     "infirmary" appearing at line 2 of the 2000 Official Edition of the  
5     General Laws of Massachusetts.

1     SECTION 4. If any one or more provision, section, sentence,  
2     clause, phrase or word of this Act or the application thereof to any  
3     person or circumstance is found by a court to be unconstitutional

4 or otherwise unenforceable, the same is hereby declared to be sev-  
5 erable and the balance of this Act shall remain effective notwith-  
6 standing. The General Court hereby declares that it would have  
7 passed this Act, and each provision, section, sentence, clause,  
8 phrase or word thereof, even if any one or more provision,  
9 section, sentence, clause, phrase, or word would be found by a  
10 court to be unconstitutional or otherwise unenforceable.

1 SECTION 5. This Act shall take effect immediately after its  
2 passage by the General Court and approval by the Governor, or  
3 upon its otherwise becoming a law.